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No. 93-1121

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CLERK OF THE COURT

In The
Supreme Court of the United States

October Term, 1994

ED PLAUT, NANCY McHARDY PLAUT,
and JOHN GRADY,

Petitioners,

v.

SPENDTHRIFT FARM, INC., BATEMAN EICHLER,
HILL RICHARDS, INC., FRANCIS M. WHEAT,
GIBSON, DUNN & CRUTCHER, DELOITTE HASKINS &
SELLS, NORMAN D. OWENS, AMERICAN
INTERNATIONAL BLOODSTOCK AGENCY, INC.,

Respondents.

On Writ Of Certiorari To The
United States Court Of Appeals
For The Sixth Circuit

JOINT APPENDIX

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PLAUT, ET AL. v. SPENDTHRIFT FARM, INC., ET AL.
RELEVANT DOCKET ENTRIES FOR THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

<u>DATE</u>	<u>NR.</u>	<u>PROCEEDINGS</u>
11/20/87	1	COMPLAINT. 1 summons & 1 copy issued for each deft and given to atty for service.
11/30/87	2	FIRST AMENDED COMPLAINT. 1 summons & 1 copy issued as to each deft & given to counsel for service.
6/6/88	65	Copy of ORDER DENYING TRANSFER (Multidistrict Litigation Panel) ent: Motion for transfer of Plaut under 28 U.S.C. 1407 denied.
6/27/88	66	ORDER (SR) ent.: that the above action is referred to Hon. James F. Cook to set and conduct a hearing on all pending motions, to set and conduct such pre-trial matters as may be appropriate under 28 USC 636(b)(1)(A), and to submit proposed findings of fact and recommendations on all dispositive motions pursuant to 28 USC 636(b)(1)(B). Copies are noted.
9/6/88	86	SECOND AMENDED COMPLAINT
12/2/88	111	NOTICE of deft Spendthrift of Filing of Involuntary Bankruptcy Petition.
12/12/88	112	ORDER (SR) ent: Deft Spendthrift having advised that on 11/18/88 an Involuntary Petition Under Chapter 11 of Title 11, was filed against it, ORDERED

action stayed in its entirety pending further orders of the Court. Copies as noted.

- 12/14/88 114 MOTION OF plffs to Set Aside or Modify Stay Order, Ref #126
- 2/21/89 126 ORDER (SR) ent.: that plttfs motion to set aside or modify the stay is hereby DENIED. COM
- 1/9/91 152 ORDER (JMH) ent. 1/10/91: matter before the Court on plttf. motion to set aside or modify the stay order entered 12/12/88. ORDERED 1) Mag. Cook's recommendation ADOPTED in part; 2) the Stay Order entered 12/12/88 lifted partially as to all defts. save Spendthrift Farms, Inc.; 3) all discovery STAYED pending further orders of the Court; 4) above-styled REMANDED to Mag. Cook for consideration of all pending motions & for reconsideration of his previous recommendation regarding stature of limitations issue once S.Ct. renders decision in *Lampf, Pleva, Lipkind, Prupi & Petigrow v. Gilbertson*. COM/gwb
- 6/25/91 160 ORDER (JFC) ent.: that on 6/20/91 the Supreme Court handed down its decision in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson* regarding which statute of limitations is applicable to a private suit brought of the Securities Exchange Act of 1934. It is ORDERED that the parties shall serve and file within 15 days of the date of this Order a Memorandum of Law regarding the effect if any the holding in *Gilbertson* has on this action and the pending

motions therein. Thereafter, the matter shall stand submitted for the Mag. Judge's consideration. COM/mst

- 8/13/91 181 ORDER (JMH) ent 08/14/91; that (1) Mag's recommendation as to the disposition of the plttfs Section 10(b) claims is ADOPTED as that of the undersigned; (2) plttfs claims Section 10(b) are dismissed with prejudice; It is ORDERED that the (1) objections are SUSTAINED; (2) that Mag. Cook's Order is SET ASIDE; (3) that the plttfs motion for leave to file a 3rd Amended Complaint is DENIED. COM/mst
- 2/11/92 182 MOTION of Plttfs to Reinstate Claims under Securities Exchange Act REF #204
- 4/3/92 202 CIVIL MINUTES (JMH) et.: that matter was called for hearing on plt motion to reinstate claims under the Securities Exchange Act. The Court having considered the briefs of the parties and argument of counsel and being otherwise sufficiently advised, it is ORDERED that the motion to reinstate this action is OVERRULED, Section 27A of the securities and exchange act of 1934 is determined to be unconstitutional as applied to the facts of this case. COM/ms
- 4/13/92 204 MEMORANDUM OPINION AND ORDER (JMH) ent. 4/14/92; that matter is before court upon the motion of plttfs to reinstate claims under Securities Exchange Act of 1934. It is ORDERED that motion of plttfs to reinstate claims is DENIED. COM/mst

4/30/92 205 NOTICE OF APPEAL to 6CCA on behalf
of Pltff. COM/mst

8/31/92 RECORD FORWARDED TO 6CCA. mst

**RELEVANT DOCKET ENTRIES FOR THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

<u>DATE</u>	<u>PROCEEDINGS</u>
5/4/92	Civil Case Docketed. Notice filed by Appel- lants Ed Plaut, Nancy McHardy Plaut & John Grady. (mcp)
3/1/93	CAUSE ARGUED on 3/1/93 by J. Montjoy Trimble for Appellant John Grady, Appellant Nancy McHardy Plaut, Appellant Ed Plaut, Mark B. Stern for Intervenor USA, Glenn C. Van Bever for Appellee Spendthrift Farm Inc, L. Clifford Craig for Appellee Deloitte Haskins, Robert S. Miller for Appellee Amer Intl Bloodstock, Appellee Norman D. Owens before Judges Keith, Batchelder, Churchill. [92-5591] (paw)
8/3/93	OPINION filed: The judgment of the district court denying the shareholders' motion to reinstate their lawsuit is AFFIRMED, decision for publication pursuant to local rule 24 [92-5591]. Damon J. Keith, Circuit Judge deliv- ered a separate opinion concurring in part and dissenting in part, Alice M. Batchelder, Authoring Judge, James P. Churchill, District Judge. (cb)
8/13/93	PETITION for en banc rehearing filed by J. Montjoy Trimble for Appellants John Grady, Nancy McHardy Plaut, Ed Plaut. Certificate of service dated 8/12/93. [92-5591] (pe)

8/17/93 PETITION for en banc rehearing filed by Dou-
glas N. Letter for Intervenor USA. Certificate
of service dated 8/16/93. [92-5591] (pe)

10/14/93 ORDER filed denying two petitions for en
banc rehearing filed by Douglas N. Letter and
J. Montjoy Trimble [92-5591] Damon J. Keith,
Alice M. Batchelder, Circuit Judges, James P.
Churchill, District Judge. Circuit Judges Keith
and Boggs entered separate dissents. (pe)

11/1/93 MANDATE ISSUED with no cost taxed
[92-5591] (ds)

1/19/94 U.S. Supreme Court notice filed regarding
petition for writ of certiorari filed by Appel-
lant Ed Plaut, et ux., et al. Filed in the
Supreme Court on 01/11/94. Supreme Ct.
case number: 93-1121. [92-5591] (swh)

6/10/94 U.S. Supreme Court order filed granting peti-
tion for writ of certiorari [889778-1] filed by
Ed Plaut [92-5591]. Filed in the Supreme
Court on 06/06/94. (swh)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 87-438

ED PLAUT, ET AL., PLAINTIFFS,

VS: ORDER

SPENDTHRIFT FARM, INC.,
ET AL. DEFENDANTS.

United States Magistrate Judge James F. Cook has recommended dismissal of the plaintiffs' claims under Section 10(b) of the Securities Exchange Act of 1934 as time-barred. [Record No. 176]. There being no objections to this aspect of Magistrate Judge Cook's recommended disposition of the case, *see Thomas v. Arn*, 474 U.S. 140 (1985), and being advised,

IT IS ORDERED herein as follows:

(1) That Magistrate Judge Cook's recommendation as to the disposition of the plaintiffs' Section 10(b) claims be, and the same hereby is, ADOPTED as that of the undersigned.

(2) That the plaintiffs' Section 10(b) claims be, and the same hereby are, DISMISSED with prejudice.

Magistrate Judge Cook also granted the plaintiffs leave to file a third amended complaint. [Record No. 176]. The defendant, Bateman Eichler, Hill Richards, inc., has filed objections to this aspect of Magistrate Judge Cook's decision [Record No. 176].

The plaintiffs' third amended complaint restates their Section 10(b) claims. However, for the first time in this litigation which has been ongoing for almost four years, the plaintiffs seek to invoke this court's pending jurisdiction over Kentucky statutory and common law securities claims. [Record No. 169]. Magistrate Judge Cook recommended that the plaintiffs' Section 10(b) claims be dismissed with prejudice, but that the plaintiffs' state law claims be dismissed without prejudice. [Record No. 176].

The Court does not share Magistrate Judge Cook's belief "that the interests of justice require that the amendment be permitted in this action . . ." [Record No. 176, p. 5]. For one thing, the plaintiffs waited more than three years before asking this court to invoke its pendent jurisdiction over their state law claims. Thus, it is clear that the plaintiffs did not act with dispatch in doing so.

Second, the third amended complaint again raises Section 10(b) claims in the face of the Supreme Court's decision in *Lampf, Pleva, Lipking, Prupis & Petigrow v. Gilbertson*, ___ U.S. ___, 59 U.S.L.W. 4688 (June 20, 1991), as well as potentially time-barred state law claims. *See, e.g., Hutton v. Bockweg*, 579 S.W.2d 382, 385 (Ky. App. 1979); *City of Owensboro v First U.S. Corporation*, 534 S.W.2d 789, 791 (Ky. 1975). Thus, it would serve no purpose to permit amendment where the amended complaint clearly will not withstand a motion to dismiss.¹ *See Martin Associated Truck Lines, Inc.*, 801 F.2d 246, 248 (6th Cir. 1986).

¹ Indeed, the third amended complaint may violate Rule 11, Fed.R.Civ.P.

Accordingly,

IT IS ORDERED herein as follows:

(1) That the objections to Magistrate Judge Cook's Order permitting the filing of the third amended complaint be, and the same hereby are, SUSTAINED.

(2) That Magistrate Judge Cook's Order be, and the same hereby is, SET ASIDE.

(3) That the plaintiffs' motion for leave to file a third amended complaint be, and the same hereby is, DENIED.

This the 12th day of August, 1991.

s/Joseph M. Hood
JOSEPH M. HOOD, JUDGE

Date of Entry and Service: 8/13/91

SUPREME COURT OF THE UNITED STATES

No. 93-1121

Ed Plaut, et ux., et al.,

Petitioners

v.

Spendthrift Farm, Inc., et al.,

Respondents

ORDER ALLOWING CERTIORARI. Filed June 6, 1994

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted limited to the following question: "Whether Section 27A(b) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78aa-1, to the extent that it purports to require reinstatement of Section 10(b) actions dismissed with prejudice pursuant to judgments that became final prior to the enactment of Section 27A(b), contravenes the separation-of-powers doctrine or the Fifth Amendment Due Process Clause of the United States Constitution."

June 6, 1994
